

REMARKS

The Applicant appreciates the Examiner's participation in the brief telephone interview conducted between the Examiner and the Applicant's undersigned representative on 27 April 2011. An Applicant's Interview Summary is included herewith.

Claims 2-25 and 28-36 are pending following entry of this Amendment. Claims 1, 26, and 27 were previously canceled. Each of independent claims 20, 31, and 34 has been amended. Claims 20-25, 28-30, and 36 currently stand withdrawn. Claims 31 and 34 are the only non-withdrawn independent claims pending after entry of this Amendment.

The amended claims do not include new matter, as set forth in the following paragraph.

Each of independent claims 20, 31, and 34 was amended to specify that the width of the narrow passageway at the portion of the second step nearest the inlet region in the fluid path (i.e., at the 'upstream' edge of the second step) is greater than the height of the second passageway. This amendment is supported, for example, in paragraph [0035] of the specification, which specifies that fluid flow can continue past particles ("cells" in that paragraph) that cannot fit in the space between the second step and the cover (i.e., the height of the second passageway). That is, even when a particle/cell is trapped at the upstream edge of the second step, fluid flow can continue past the trapped particle/cell because the narrow passageway is wider (and, as set forth in paragraph [0035], preferably much wider) than the height of the second passageway.

Rejection Pursuant to 35 U.S.C. § 112 (Written Description)

The Applicant believe that only a single rejection remains in the Office Action.

In item 3 of the Office Action, the Examiner rejects claims 2-19 and 31-35 pursuant to 35 U.S.C. § 112, first paragraph. In the Examiner's view, the recitation, added in the Applicant's previous amendment, that the width of the narrow passageway at the upstream edge of the second step is "more than twice the height of the second passageway" was not adequately supported in the specification.

Each of the pending independent claims has been amended to remove the "more than twice the height" language to which the Examiner objects. In its place, the Applicants have amended each independent claim to recite that the width of the narrow passageway at the

upstream edge of the second step is “greater than” the height of the second passageway. The Applicants respectfully contend that this language is plainly supported by paragraph [0035] of the specification. That paragraph discloses that (in the context of the “particle” recited in the independent claims being a “cell”) passage of a cell past a step depends on the distance between the step and the cover or body (i.e., the height of the step), the width of the step is not critical because *“even if one portion of a step becomes clogged with cells that cannot fit in the space between the step and the cover or body, fluid flow can continue along the remaining width of the step.”* The Applicant respectfully contends that a skilled artisan reading paragraph [0035] would understand that paragraph to mean that, for the second step recited in the independent claims, particles can be trapped at the upstream side of the second step if the particle is larger than the height of the second passageway (i.e., the space between the second step and the body or cover), but fluid flow through the second passageway can continue because the width of the narrow passageway (the narrow passageway is the second passageway at the upstream edge of the second step) is not obstructed by the particle – i.e., it is greater than the height of the second passageway.

Reconsideration and withdrawal of the Examiner’s rejection pursuant to 35 U.S.C. § 112, first paragraph, are respectfully requested.

Comment Regarding Previous Prior Art-Based Rejections

During the 27 April 2011 telephone interview, the Examiner indicated that, if § 112 rejection were withdrawn on account of amendments made to the claims, it would be necessary to confirm that the amended claims remain clear of the art previously cited.

The Examiner previously rejected claims made in this application based on prior art rejections based on Sato (U.S. Patent No. 5,023,054), either alone or in combination with other art.

Simply put, Sato discloses a device for passing cells through a narrow channel in a one-cell-at-a-time fashion – with each channel therefore being susceptible to clogging by a single impassable cell. By contrast, the Applicant’s claimed apparatus has steps wide enough to accommodate multiple impassable cells without clogging. Sato, both alone and in combination

with the other art previously cited, fails to suggest that Sato's apparatus should, or even could, be altered to yield the apparatus claimed by the Applicant. Thus, Sato fails to anticipate or render obvious any of the Applicant's claims.

Proposed Rejoinder

The Applicant respectfully believes that each of claims 2-19 and 31-35, as amended is in condition for allowance. Each of these claims is drawn to an apparatus.

The Examiner previously required restriction between claims directed to apparatus and claims directed to methods of using that apparatus.

Claims 20-25, 28-30, and 36 are presently withdrawn, but are method claims which recite use of the same apparatus recited in independent claims 31 and 34. All of the amendments made to claims 31 and 34 during prosecution of this application have also been made to withdrawn independent (method) claim 20, from which each of (method) claims 21-25, 28-30, and 36 depends. Thus, each of these method claims recites use of an apparatus having every limitation recited in at least independent claim 31. The Applicant respectfully contends that, if claims 31 and 34 are considered by the Examiner to be in condition for allowance, then claims 20-25, 28-30, and 36 should be rejoined, considered on their merits, and allowed as well. Such rejoinder is respectfully requested.

Summary

The Applicant respectfully contends that each of the Examiner's rejections in the Office Action should be reconsidered and withdrawn in view of the arguments presented herein and the amendments made to the Applicant's claims.

Consideration and allowance of each of claims 2-25 and 28-36 are respectfully requested at the earliest possible time.

Respectfully submitted,

Georgi HVICHIA

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(Date)

By: /Gary D. Colby/
GARY D. COLBY, Ph.D., J.D.
Registration No. 40,961
DILWORTH PAXSON, LLP
Customer No. 27730
1500 Market Street, Suite 3500E
Philadelphia, PA 19102-2101
Telephone: **215-575-7075**
Facsimile: 215-575-7200
E-Mail: gcolby@dilworthlaw.com